IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 335 OF 2005

WITH

CIVIL APPLICATION NO. 802 OF 2005

Smt. Shardadevi Sarojkumar Tiwari ..Appellant

versus

The Municipal Corporation of

Greater Bombay ..Respondents

Mr. P. K. Dhakephalkar with Mr. R. R. Sharma for the Appellant.

Mr. A. Y. Sakhare with Mr. J. J. Xavier for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH JUNE,2005

ORAL ORDER :

1. Heard counsel for the Appellant and the Respondents.

2. Appellant is the original plaintiff. She filed a B.C.C.C. L.C. Suit No. 308 of 1999 for a declaration that the notice dated 3.1.1998 issued by the Respondents under Section 351 of Mumbai Municipal Corporation Act (MMC Act) and the order

passed by the D.M.C. Zone IV dated 7.1.1999 is illegal, bad in law and arbitrary. According to the plaintiff she was residing and carrying on business in the premises since 1980 and she had documentary evidence in that regard. The area of the structure is about 24’ x 26’, but she was in actual possession of 10’ x 15’. Her contention was all the structures prior to 1995 are protected as per the circulars and guidelines issued by the Government, and, in this background, the notice issued by the Respondents under Section 351 of the MMC Act, was illegal.

3. It was the defence of the Respondents that the structure of the plaintiff was unauthorised. It was on a plot of land reserved for public purpose as playground. The construction was made without permission of the Commissioner. The plaintiff had filed earlier a Suit i.e. Suit No. 6594 of 1996. The plaintiff had shown her address as Baptista Compound and also relied upon Order of the Tahsildar showing that this suit structure was in Baptista Compound. Therefore, the documents of the plaintiff are for one structure and the suit is for protection of another structure. The trial court framed issues and held that the suit was not maintainable in the absence of any statutory notice under Section 527 of the MMC Act and also held that the notice under Section 351 of MMC Act, and, the Order of the D.M.C.

were not illegal. Consequently, the suit came to be dismissed. Hence, this Appeal.

4. Counsel for the appellant - -plaintiff contended that the appellant had number of documents right from Exhibit ’B’ to Exhibit ’Z’ Collectively and Exhibit ’AA’ to Exhibit ’DD’ Collectively. Counsel for the appellant, however, contended that in the written statement the Respondents has taken a stand that alternate accommodation was allotted to the plaintiff and that plea was taken by the Respondents in their additional written statement and, if, this is so, then the Respondents cannot be permitted to go back from their stand.

5. However, according to the Respondents it was pointed out to the trial court itself that that was a mistake in pleading and this additional written statement came to be filed after the additional affidavit of evidence of the plaintiff came to be filed wherein the plaintiff states about three structures of the plaintiff, her husband and her brother in law on Plot No. 62/63, for which alternate pitches were granted to all the three.

6. So far as merits of the matter are concerned, the notice under Section 351 of the MMC Act, is in respect of a garden plot at Goregaon

West. The court noted that the plaintiff, her husband and her brother in law had three structures on the same Plot No. 62/63, they were demolished for road widening and alternate accommodations granted to the plaintiff. The court therefore came to the conclusion that the plaintiff is trying to take advantage and exploit the situation by claiming legality to these structures so that she can also get another structure as alternative. Trial court has considered all these aspects carefully and has come to the conclusion that the plaintiff has utterly failed to prove legality of the structure. The court also came to the conclusion that the plaintiff was trying to mislead the court. All the documents of the plaintiff were considered, but, none of them proved the legality of the structure. The fact that the suit plot is a garden was suppressed by the plaintiff deliberately by not mentioning the CTS number in the plaint. These aspects have been strongly criticised by the court in paragraph 51 of the judgment and therefore there is no merit in this appeal. The same is dismissed along with Civil Application. Prayer for continuing interim relief is rejected.

29.6.2005 (D.G. DESHPANDE, J.)